

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of decision : 25-9-1996.

SPECIAL CIVIL APPLICATION No. 5053 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

NEW KAMALKUNJ CO.OP.HO.SOC.LTD

Versus

STATE OF GUJARAT

Appearance:

Mr. A.J. Patel, Advocate for the petitioner.

Mr. A.G. Uraizee, A.G.P.for Respondent No. 1

SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 25/09/96

ORAL JUDGEMENT

The petitioner, by this application, calls in question the order dated 19th March 1994 passed by the learned Additional Chief Secretary (R.D.), Ahmedabad, upsetting the order of the District Development Officer, Gandhinagar, passed

on 25th June 1990.

2. In short, the case of the petitioner is that for the construction of the residential houses for the members of the Co-operative Society the land was purchased on 17th and 18th August 1990 for Rs. 4,65,885/-, and possession thereof was taken. In that connection on 25th June 1990 the petitioner-society obtained N.A. permission which is produced at Annexure 'C'. After obtaining the permission the society started to construct residential premises. When the construction reached the lintel level, the Additional Chief Secretary issued the notice on 19th January 1991 to which the petitioner replied on 16th February 1991. It was submitted before the authority besides the order being legal and valid, that huge amounts were invested for the lower middle class people, and if the order granting N.A. permission was reviewed, they would be put to several hardships and financial stringencies. They would be homeless for no fault on their part and their miseries and woes would know no bounds. However, their submission was not accepted, and order setting aside the order passed by the District Development Officer came to be passed. It is against this order the present petition is filed and its legality is challenged.

3. On behalf of the opponents, Mr. A.G. Uraizee, learned Assistant Government Pleader appeared and submitted that the Additional Chief Secretary, while passing the impugned order, has not fallen into error either of law or of fact and it was within his competence to pass the order in question. Having regard to the facts and circumstances of the case when the order is passed, there is no reason for this Court to interfere with the same.

4. The whole petition can be disposed of only on one point going to the root of the case, and therefore I would not dwell upon on other points on which both the parties have submitted. As per Section 211 of the Bombay Land Revenue Code, the State Government or a higher ranking officer may enquire into the orders passed by any subordinate Revenue Officer, and that enquiry or proceeding may or may not relate to the question of grant of permission under Section 65 of the Code. The enquiry however has to be made within a reasonable time, and the length of reasonable time can be governed by the facts and circumstances of each case. When the order passed under Section 65 of the Code is sought to be reviewed, the time factor set out in the provision itself gives a clear indication of what could be the reasonable time within which the jurisdiction has to be exercised. Therefore, the exercise of powers under Section 211 of the Code in regard to the order passed under Section 65 of the Code stands on a different footing. The revisional jurisdiction must be exercised within

reasonable time. It has been held that 'within reasonable time' would amount to ordinarily a period of 3 months. If necessary enquiry is not made or review powers are not exercised within a period of three months, and for belated action no satisfactory explanation is advanced, the Court has to hold that the powers are not exercised within a reasonable time and therefore whatever order is passed, exercising the power, has to be struck down. This is what is held by this Court in the case of Bipinchandra G. Dalal & Anr. vs. State of Gujarat & Anr - 1987(2) G.L.H. 127, relying upon the decision of the Supreme Court rendered in the case of State of Gujarat vs. Raghavanath - AIR 1969 S.C. 1297. In short, the authority vested with power to review or revise or examine the validity of the order passed by his subordinate officer, cannot at any time for no good reason, as per his choice or whims or caprice review or revise or examine validity of the order and upset what has been set up well consequent upon the order or permission.

5. In this case, therefore, the competent authority, namely the Additional Chief Secretary was no doubt free to exercise his powers and examine the legality or propriety of the order granting N.A. permission but he ought to have exercised his powers within reasonable time, i.e. within 3 months. The N.A. permission was granted on 25th June 1990, and the authority preferred to exercise the powers on 19th March 1994. It, therefore, follows that the powers are not exercised within the reasonable time. When that is so, the order passed by that authority is required to be struck down. On behalf of the State, Mr. Uraizee failed to point out any material on record which would support the case of the opponent. In the result, the petition is allowed and the order passed by the Additional Chief Secretary (R.D.) on 19th March 1994 at Annexure 'G' is hereby quashed and set aside. No order as to costs in the circumstances of the case. Rule to that extent is made absolute.

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